In the High Court of Judicature at Madras

Dated:09.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.314 OF 1997

1. Prabhakaran
2. Shanta .Appellants/Defendants

v

Parish Priest,St.Michael's
Church, Ketti in the District
of Nilgiris, the present incumbent
being Rev.Father I. Arulraj ..Respondent/Plaintiff

This second appeal is filed against the judgment and decree dated 25.6.1996 in A.S.No.3 of 1996 on the file of the Court of Subordinate Judge of Nilgiris at Ootacamund reversing the decree and Judgment of the learned District Munsif, Kunnoor dated 8.9.1995 in O.S.No.18 of 1986.

For Appellants : Mr.V.Sairam
For Respondent : Mr.S.K.Rakhunathan.

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.3 of 1996 on the file of the Court of Subordinate Judge of Nilgiris at Ootacamund. The defendants in O.S.No.18 of 1986 are the appellants herein. The learned trial Judge has dismissed the suit against which the plaintiff has preferred an appeal in A.S.No.3 of 1996 before the learned Subordinate Judge of Nilgiris at Ootacamund, who has allowed the appeal setting aside the decree and judgment of the learned trial Judge in O.S.No.18 of 1986. Hence the defendants are before this Court.

2. The short facts in the plaint relevant for the purpose of deciding this appeal sans irrelvant particulars are as follows:

The defendants are the tenants in respect of the suit property under

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the plaintiff. The door Number of the suit property is X-11/292,Thoraijada Ketti Panchayat. The tenancy was oral and the monthly rent for the suit premises is Rs.20/-. The plaintiff issued a suit notice to quit dated 28.11.1985 by terminating the tenancy of the defendants with effect from 31.12.1985 and has called upon the defendants to deliver vacant possession of the suit property. The second defendant has sent a reply notice dated 8.12.1985 with false and untenable contentions. The defendants are liable to pay damages for use and occupation of the premises from 1.1.1986 at the rate of Rs.20/- per mensum. Hence the suit for recovery of possession and also for future damages at the rate of Rs.20/- per mensum from 1.1.1986 till the date of delivery of possession and for costs.

3. The first defendant iremained exparte.

4.The second defendant has filed a written statement contending as follows:

The suit property belongs to St.Michael's Church Ketti represented by the Parish Priest. Thomas V.Theckapara is the priest of the Church. The admitted rent for the suit premises is Rs.20/- per mensum and the Church authorities used to receive the rent in lumpsum from the defendants even once in six months also. The Church authorities have been refusing to receive the rent from the defendants for the last one year and the reasons for the same are not best known to the present priest. The usual practice is that the priest of the church on behalf of the church used to collect the rent and make entries for the same in a pocket note book which is under the custody of the defendants. The church owns a total number 71 houses in Ketti Village. The church has 52 houses in Thoraizada alone. The remaining 19 houses are at Santhoor Village. No notice was sent to any of the remaining tenants of the church except the defendants herein. She has been paying the rent regularly. The defendant has received the notice from the plaintiff through his advocate and she has given a reply . The second defendant has sent a sum of Rs.100/- by way of cheque drawn on the State Bank of India, Ootacamund branch being the rent for the premises. Cheque Number is 357468 dated 9.12.1985. The plaintiff has accepted the same on 12.2.1986. The second defendant again through her lawyer sent a sum of Rs.100/- by cheque drawn on the State Bank of India, Ootacamud Branch in favour of St.Michael's Church and handed over the said cheque to the advocates for the plaintiff. Cheque Number being 630370 dated 19.2.1986. The said cheque has not yet been realised. Only to harass the defendants, the plaintiff has filed the suit.The second defendant is staying in the suit premises for the last ten years. There are only two small rooms under her occupation. She has got two daughters aged about 10 years and 5 years respectively. She is working at Michael's Church and getting a sum of Rs.6/- per day. She is not in a position to vacate and deliver the vacant possession of the premises in question as alleged in the plaint. Hence the suit is liable to be

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dismissed.

5. On the above pleadings, the trial Court had framed three issues for trial. On the side of the plaintiff, P.W1 was examined and Exs A1 and A2 were marked. On the side of the defendants,the second defendant has examined herself as D.W.1 but not let in any documentary evidence.

6. After going through the oral and documentary evidence, the learned trial Judge has come to a conclusion that the plaintiff is not entitled to any relief asked for in the plaint and accordingly dismissed the suit without costs. Aggrieved by the findings of the trial Judge, the plaintiff has preferred an appeal before the Suborindate Judge of Nilgiris at Ooctacamund. After due deliberation, the learned first appellate Judge has allowed the appeal thereby setting aside the decree and judgment in O.S.No. 18 of 1986 on the file of the Court of District Munsif, Kunnoor thereby decreeing the suit as prayed for which necessitated the defendants to prefer this second appeal.

7. The substantial questions of law involved in this appeal are

> " 1. Whether the lower appellate Court was right in revering the well considered judgment of the trial Court on the mere reason that there need not be any reason in the notice to quit sent by the respondents?
> 2. Whether the lower appellate Court was not in error in not at all giving any finding as to whether the notice to quit was proper and correct in terms of Section 106 of the Transfer of Property Act?
> 3. Whether the lower appellate Court was right in allowing the appeal on the sole ground that a simply sitter notice is enough without going to the question of the validity of the notice."

8. The Points:

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It is the admitted case of both the parties that the tenancy in respect of the suit property between the plaintiff and the defendants is only oral, for a monthly rent of Rs.20/- . According to P.W.1, a Priest of the plaintiffi's church, the tenancy was terminated by Ex A1 notice which was issued as per Section 106 of the Transfer of Property Act, 1882. The learned counsel appearing for the appellant would contend that there was no reason stated in Ex A1 notice for termination .

> Section 106 of the Transfer of Property Act runs as follows:

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> Duration of certain leases in absence of written contract or local usage:
> (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month,terminated, on the part of either lessor or lessee, by fifteen days' notice.
> 2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section(1) shall commence from the date of receipt of notice;
> 3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub section.

So as per the above provision of law, only a notice to quit giving 15 days time is enough for the plaintiff to demand the defendants to vacate and hand over the vacant possession of the suit property.Ex A1 notice is dated 28.11.1985. The defendants have been called upon under Ex A1 notice to vacate and hand over the possession of the suit premises on or before 31.12.1985. So more than 15 days time has been granted under Ex A1 notice for the defendants to vacate and hand over the possession of the suit property as contemplated under Section 106 of the Transfer of Property Act 1885.

9. The learned counsel appearing for the appellant would attack the Judgment of the learned first appellate Court on the ground that even after Ex A1 notice, the rent sent by the second defendant by way of cheque to the tune of Rs.100/- was received by P.W.1 and that will amount to the waiver of the notice. But this contention of the learned counsel appearing for the appellant cannot hold any water because in the cross examination itself D.W.1 has admitted that the rent sent by her by way of cheque to the tune of Rs.100/-, after Ex A1 notice was only towards the arrears of rent which was due to the plaintiff before December 1985. So the contention of the learned counsel appearing for the appellant that even subsequent to EX A1 notice rent was sent by the second defendant was received by the plaintiff and that it will amount to waiver of Ex A1 notice cannot be sustainable.

10. Under such circumstances, I do not find any reason to interfere with the well considered Judgment of the learned first

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appellate Court in A.S.NO.3 of 1996 which is neither infirm nor illegal requiring any interference from this Court. Points are answered accordinlgy.

11. In the result, the appeal is dismissed confirming the decree and Judgment in A.S.No.3 of 1996 on the file of the Court of Subordinate Judge, Nilgiris, at Ootacamund with costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sg

To

1. The Subordinate Judge, The Nilgiris at Ootacamund.
2. The District Munsif, Kunnoor.
3. The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.V.Sairam, Advocate Sr 8046

+1cc to Mr.S.K.Rakhunathan, Advocate Sr 7970

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km/28.2.

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